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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

RODOLFO FIDEL MENDOZA,
individually, and on behalf of a class of
similarly situated individuals,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendant.

CASE NO. CV 10-2683 AHM (VBK)

Hon. A. Howard Matz

**FIRST AMENDED COMPLAINT
FOR:**

- (1) **Violations of California
Consumer Legal Remedies Act**
- (2) **Violations of Unfair Business
Practices Act – Secret
Warranty**
- (3) **Violations of Unfair Business
Practices Act**

JURY TRIAL DEMANDED

Case No.: CV 10-2683 AHM (VBK)

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CENTRAL DIST. OF CALIF.
LOS ANGELES

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INTRODUCTION

1
2 1. Plaintiff Rodolfo F. Mendoza ("Plaintiff") brings this action against
3 General Motors, LLC ("GM" or "Defendant") on behalf of himself and all
4 similarly situated persons ("Class Members") who purchased or leased a
5 Chevrolet Equinox sport utility vehicle ("SUV") of model years 2005 to 2009 and
6 Pontiac Torrent SUV of model years 2006 to 2009 (collectively, the "Class
7 Vehicles").

8 2. On or about July 2009, Defendant acquired the assets of General
9 Motors Corporation ("old GM") in a sales transaction that received the approval of
10 the United States Bankruptcy Court for the Southern District of New York. In
11 connection with this acquisition, Defendant assumed certain liabilities of old GM,
12 including, among other things, all claims arising from accidents or other discrete
13 incidents arising from operation of the Class Vehicles occurring subsequent to the
14 closing date of the sales transaction, regardless of when the Class Vehicles were
15 purchased. Defendant also agreed to comply with "the certification, reporting and
16 recall requirement of National Traffic Motor Vehicle Safety Act . . . California
17 Health and Safety Code and similar Laws,¹ in each case, to the extent applicable
18 in respect of [Class] vehicles and [Class] vehicle parts manufactured or distributed
19 by [Old GM]."

20 3. In or around the time it acquired the assets and assumed the liabilities
21 of Old GM, if not before, Defendant knew or should have known that the Class
22 Vehicles contain one or more design flaws and/or structural defects that causes
23 them to be highly prone to water leaks and flooding (the "water leak defect"),
24 including but not limited to water leaks that result in flooding of the trunk and

25
26 ¹ The Master Sale & Purchase Agreement ("MPA") defines "Laws" as
27 "any and all applicable United States or non-United States federal, national,
28 provincial, state or local laws, rules, regulations, directives, decrees, treaties,
provisions of any constitution and principles (including principles of common
law) of any governmental authority, as well as any applicable Final Order."

1 spare tire well, water leaks that result in damage to the vehicles' front lights and
2 taillights, as well as water leaks to the car's interior cabin, causing mold and
3 electrical failure due to the water damaging the computer, electrical system, and
4 interior components of the Class Vehicles.

5 4. Defendant also knew or should have known that the water leak defect
6 presents a safety hazard and is unreasonably dangerous to consumers for several
7 reasons. The water leak defect is dangerous because of the danger of catastrophic
8 engine and/or electrical system failure as a result of the water damaging the
9 vehicle's interior components while the vehicle is in operation. Thus, the flooding
10 can cause engine failure, suddenly and unexpectedly, at anytime and under any
11 driving condition or speed, thereby contributing to traffic accidents, which can
12 result in personal injury or death.

13 5. The water leak defect is also known to cause tail lights to fail or
14 malfunction. This creates an unreasonably dangerous situation for the driver and
15 vehicles behind the driver that can potentially lead to rear-end accidents, or at the
16 very least, can result in traffic violations, tickets, and increased insurance
17 premiums for the Class Vehicles' drivers.

18 6. Further, the water leak defect is particularly dangerous in a relatively
19 closed environment like that found inside an SUV such as the Class Vehicles
20 (even more so when the air is being recycled) because it can promote mold
21 growth. For example, when it rains or when the vehicle is washed, the failure of
22 the Class Vehicles to prevent water from entering the vehicle causes the water to
23 accumulate in the trunk and/or passenger compartment, causing mold (as well as
24 bacteria and other contaminants) to infect the air of the car's interior cabin,
25 thereby exposing Class Members, their passengers, and individuals with whom
26 they come in contact to serious health risks.

27 7. Mold reproduces by generating spores that are released into the air,
28 which then land on moist surfaces. They thrive in dark, warm, and moist

1 locations, such as inside trunks and under tire wells, under wet carpets, within the
2 vehicles' interior cabins, and other such locations. Mold can trigger numerous
3 health problems, including allergic reactions and asthma attacks. For example,
4 exposure to these mold and other contaminants can cause difficulty breathing and
5 headaches, as well as asthma and allergies, in those who would not otherwise have
6 such health problems. These dangers are exacerbated by the fact that the mold
7 and other contaminants can be transferred by touch to other surfaces separate from
8 the vehicle. So, for example, if a passenger places an object in the trunk of a
9 vehicle with mold, that mold can attach to the surface of that object and will be
10 taken wherever that object is taken, *e.g.*, the home, the workplace, school, etc.
11 Complaints from exposure to mold include, but are not limited to, flu-like
12 symptoms, chronic fatigue syndrome, memory impairment, migraine headaches,
13 sick-building syndrome, dizziness, and nosebleeds.²

14 8. The soaked interiors of Class Vehicles subject to the water leak
15 defect are also extremely difficult to dry properly and are often prone to hazardous
16 mold and odor, even after several detailed cleanings. Moreover, smaller, initial
17 leaks, as well accumulation of water under the tire well—while still causing the
18 same damage to the vehicles and their owners (*i.e.*, hazardous mold)—can
19 sometimes go undetected for weeks.

20 9. In addition to safety hazards, the cost of the water leak defect to
21 consumers can be exorbitant because consumers will be required to pay hundreds,
22 if not thousands, of dollars both to repair the water leak defect and to repair the
23

24 ² These are the mild symptoms. Many researchers claim that mold can
25 attack several main body systems, including the brain, the central nervous
26 system, and the immune system. Mold has been the direct cause of some deaths.
27 Asthmatics, infants, and individuals suffering immune system deficiencies are
28 particularly susceptible to the deleterious effects of mold. People with asthma
when exposed to strong concentrations of mold can literally die from such
exposure.

1 extensive damage that it causes to the vehicle's flooring, carpeting, and electrical
2 systems.

3 10. Plaintiff is informed and believes and based thereon alleges that as of
4 July 2009, if not before, Defendant knew or should have known that the Class
5 Vehicles are defective and not fit for their intended purpose of providing
6 consumers with safe and reliable transportation. Nevertheless, Defendant has
7 actively concealed and/or failed to disclose this defect from Plaintiff and the Class
8 Members at the time of purchase, lease, or repair, and thereafter.

9 11. Plaintiff is informed and believes and based thereon alleges that as of
10 July 2009, Defendant knew that Old GM had issued a secret technical service
11 bulletin ("TSB") to its dealers acknowledging the existence of the water leak
12 defect and implementing a cheaper, albeit temporary, fix: mainly replacing
13 and/or resealing (with a special "3M(TM) Ultrapro Autobody Sealant Clear or
14 [its] equivalent") various structural components of the Class Vehicles that are
15 defective, in part, because of insufficient, inadequate, or improperly applied body
16 sealer.

17 12. Defendant also knew that Old GM had not disclosed the existence of
18 the TSB to Plaintiff, prospective Class Members, or the California New Motor
19 Vehicle Board, as is required by California's Secret Warranty Law. Defendant
20 also knew that under the MPA and pursuant to California's Secret Warranty Law
21 it had a duty (after its acquisition of Old GM's assets and liabilities) to
22 immediately disclose the TSB to the various entities and failed to do so.

23 13. Instead, Defendant decided to attribute the water leaks to outside
24 influences and refused to cover the problem under warranty, as it was required to
25 do so under the MPA.³

26
27 ³ Under the MPA, Defendant has agreed to assume "(A) all Liabilities
28 arising under express written emission and limited new vehicle warranties,
certified used vehicle warranties [which normally come with 6 years/100,000

1 14. Although it is true that Defendant normally attributes water leaks to
2 outside influences and does not cover them under warranty, it nevertheless has
3 instructed its dealers to perform the resealing and/or or replacement program at no
4 cost to the consumer.

5 15. However, Defendant's clandestine program to temporarily fix the
6 water leak defect with a special sealer was strictly limited to the most persistent
7 customers and only those who visited the dealer and complained loudly enough
8 about the problem. For example, when Plaintiff's daughter complained about the
9 water leak defect, she was told by a GM authorized dealer that "it happens here all
10 the time" and to "just air it out."

11 16. Plaintiff is informed and believes and based thereon alleges that if
12 Defendant's secret, temporary fixes, including resealing of the various structural
13 components of the Class Vehicles with the special sealer, are successful, the effect
14 of these fixes only last long enough to ensure that the manifestation of the water
15 leak defect occurs outside of warranty period, but they will not permanently
16 remedy the problem. This ultimately leaves consumers with defective vehicles
17 that are substantially certain to again experience the water leak defect, the
18 consequent damage caused by water leaks, and the associated safety hazards.

19 17. Plaintiff is also informed and believes and based thereon alleges that
20 Defendant is aware that replacing and/or resealing the various structural
21 components of the Class Vehicles does not fix the water leak defect. However,
22 Defendant continues to implement the replacing and/or resealing process simply to
23

24 miles warranty], and pre-owned vehicle warranties delivered in connection with
25 the sale of new, certified used or pre-owned vehicles manufactured or sold by
26 [Old GM] or Purchaser prior to or after the Closing and (B) all Liabilities arising
27 under express written emission and limited warranties and warranties with
28 respect to new or remanufactured motor vehicle parts and equipment (including
service parts, accessories, engines and transmissions), manufactured or sold by
[Old GM] or Purchaser," even if the vehicle was manufactured before the date of
acquisition.

1 prolong the amount of time that will elapse before the water leak problem again
2 manifests itself; thus, helping ensure that the water leak defect occurs outside of
3 the warranty period so that Defendant can easily and unfairly shift financial
4 responsibility for the water leak defect to Class Members.

5 18. Plaintiff is also informed and believes and based thereon alleges that
6 to mollify those consumers who complain loudly enough, Defendant implemented
7 another clandestine program to secretly reimburse or pay for repair costs of those
8 Class Vehicles that suffer from the water leak defect and the related damage that it
9 causes, even when the water leak defect and the related damage that it causes
10 occurs outside the vehicle's 3-year/36,000-mile express warranty period.
11 However, as with its secret TSB program, Defendant's secret repair and/or
12 reimbursement program is also strictly limited to the most persistent customers
13 who complain loudly enough. For example, Defendant refused to replace
14 Plaintiff's indoor carpeting damaged by the water leak defect while agreeing to
15 replace or reimburse the floor carpeting and other similar items which is similar to
16 the manner in which Defendant deals with the most persistent customers who
17 complain loudly enough.

18 19. Plaintiff is informed and believes and based thereon alleges that
19 despite notice of the defect from numerous customer complaints, Defendant has
20 not recalled the Class Vehicles to repair the defect, has not offered its customers a
21 suitable repair or replacement free of charge, and has not offered to reimburse the
22 Class Vehicles' owners and leaseholders the costs they incurred relating to
23 repairing water leaks and the related damage that it causes, including but not
24 limited to repairing or replacing electrical components and floor carpeting,
25 detailed cleaning and drying, removal of foul odors, repairs from water damage,
26 increased insurance premiums, vehicle rental costs, etc.

27 20. Defendant knew and concealed the defects that are contained in every
28 Class Vehicle, along with the attendant dangerous safety problems and associated

1 repair costs, from Plaintiff and Class Members at the time of sale or repair and
2 thereafter. Had Plaintiff and the Class Members known about these defects at the
3 time of sale or repair, Plaintiff and the Class Members would not have purchased
4 the vehicles; nor would they have repaired the Class Vehicles, because the
5 temporary fixes do not repair the water leak defect. As a result of Defendant's
6 actions, owners and/or lessees of the Class Vehicles have suffered ascertainable
7 loss of money, property, and/or loss in value.

8 21. Additionally, as a result of the water leak defect in the Class
9 Vehicles, Plaintiff and the Class Members have been harmed and have suffered
10 actual damages in that the Class Vehicles are experiencing continuous,
11 progressive, and repeated water leak defect problems and/or are substantially
12 certain to experience water leak defect problems before their expected useful life
13 has run.

14 PARTIES

15 Plaintiff:

16 22. Plaintiff Rodolfo Mendoza is a California citizen who lives in Los
17 Angeles County, California. Mr. Mendoza purchased a used 2008 Chevrolet
18 Equinox LS from Wondries Chevrolet on January 18, 2009. Mr. Mendoza
19 purchased this vehicle primarily for his personal, family, or household purposes.
20 This vehicle was manufactured, sold and warranted by Old GM, and bears the
21 Vehicle Identification No. 2CNDL13F786001899.

22 23. In December 2009, with approximately 35,000 miles on the vehicle's
23 odometer and after a week with a great deal of rainfall, Mr. Mendoza's daughter,
24 Ms. Janet Mendoza, noticed a pungent odor emanating from the vehicle that
25 caused her light headaches and breathing difficulties. A few days later when
26 clearing out the back seat of the vehicle, Ms. Mendoza noticed that her file folders
27 had fallen out and were wet. Upon further investigation, Ms. Mendoza noticed
28 that the rear passenger and driver side seat of the vehicle were all wet.

1 24. On December 15, 2009, Ms. Mendoza brought the vehicle to an
2 authorized GM dealer, complaining that there was a foul odor and that water was
3 leaking inside the vehicle. In response, the dealer instructed Ms. Mendoza to "just
4 air it out" and that "it happens here all the time." Not satisfied with this response,
5 Ms. Mendoza visited another authorized GM dealer, who ultimately sent her to
6 O'Donnell Chevrolet-Buick, GM's authorized dealer in San Gabriel, CA. The
7 sales manager there inspected the vehicle, opened up the trunk, and showed Ms.
8 Mendoza that (in addition to the interior of the vehicle) the spare tire pit in the
9 trunk was also full of water.

10 25. O'Donnell Chevrolet did not provide Plaintiff with the fixes that
11 Defendant had outlined in its clandestine TSB program to its dealers.

12 26. The GM dealer also confirmed that there was mold and an associated
13 mildew odor in the vehicle but refused Plaintiff's request to replace the carpets.

14 27. When the vehicle was finally returned to Plaintiff and her daughter,
15 the vehicle still smelled of mildew. In fact, Plaintiff's vehicle continues to
16 experience problems associated with the water leak defect.

17 28. In addition to other damages, Plaintiff has incurred damages related
18 to cleaning the interior carpets of the vehicle. Similarly, like other class members,
19 Plaintiff has not received the fixes outlined in Defendant's secret TSB.

20 **Defendant:**

21 29. Defendant GM is a Delaware Limited Liability Company with its
22 headquarters and principal place of business in the State of Michigan. Defendant
23 does business in the state of California. Defendant designs, tests, manufactures,
24 distributes, warrants, sells, and leases various vehicles under several prominent
25 brand names, including but not limited to Chevrolet, GMC, GM, and Pontiac
26 throughout the United States.

27 **JURISDICTION**

28 30. This is a class action.

1 31. Members of the proposed Plaintiff Class are citizen of California, a
2 state different from the home state of Defendant.

3 32. On information and belief, the aggregate claims of individual Class
4 Members exceed \$5,000,000, exclusive of interest and costs.

5 33. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

6 **VENUE**

7 34. Defendant, through its business of distributing, selling, and leasing its
8 Class Vehicles, has established sufficient contacts in this district such that it is
9 subject to personal jurisdiction here. Defendant is deemed to reside in this district
10 pursuant to 28 U.S.C. § 1391(a).

11 35. In addition, a substantial part of the events or omissions giving rise to
12 these claims and a substantial part of the property that is the subject of this action
13 are in this district.

14 36. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

15 **APPLICABLE LAW**

16 37. California State law applies to all claims in this action.

17 **FACTUAL ALLEGATIONS**

18 38. The Class Vehicles contain a water leak defect. This defect is
19 substantially and unreasonably dangerous, as it can result in drivers of the Class
20 Vehicles being exposed to hazardous contaminants, such as mold. Further, the
21 water leak defect can lead to irreparable damage to electrical and mechanical
22 components in the Class Vehicles, such as the front lights and tail lights, which
23 creates a serious operational and safety concern to both the Class Vehicles'
24 occupants and the public.

25 39. The water leak defect is also dangerous because of the danger of
26 catastrophic engine and/or electrical system failure as a result of leaked water
27 damaging the vehicle's interior components while the vehicle is in operation.
28 Thus, the flooding can cause engine failure, suddenly and unexpectedly, at any

1 time and under any driving condition or at any speed, thereby contributing to
2 traffic accidents, which can result in personal injury or death.

3 40. Plaintiff is informed and believes and based thereon alleges that
4 Defendant acquired its knowledge of the water leak defect through internal
5 sources not available to Class Members, including but not limited to Old GM's
6 pre-release and other internal testing data, consumer complaints about the water
7 leak defect that were made to both Old GM and Defendant, testing conducted in
8 response to those complaints, aggregate data from Defendant's dealers, and from
9 other internal sources.

10 41. Hundreds, if not thousands, of purchasers and lessees of the Class
11 Vehicles have experienced problems with water leaks. Complaints filed by
12 consumers with the NHTSA and posted on the Internet demonstrate that the defect
13 is widespread and dangerous, and that it manifests without warning. The
14 complaints also indicate Defendant's awareness of the defect and how potentially
15 dangerous the defective condition is (note that spelling and grammar mistakes
16 remain as found in the original):

- 17 • NHTSA Complaint: ON JAN. 11, 2010, I STARTED MY CAR TO
18 LET IT WARM UP BEFORE LEAVING FOR WORK. I LET THE
19 CAR RUN FOR ABOUT 10 MINUTES. DROVE THE 20 MINUTE
20 DRIVE TO WORK, AND WHEN I GOT DOWNTOWN, THE CAR
21 SHUT DOWN AND ALL OF THE WARNING LIGHTS ON THE
22 DASHBOARD CAME ON. WAS ABLE TO COAST TO SIDE OF
23 STREET AND STOP CAR. RESTARTED CAR AND PUT INTO
24 DRIVE. ALL WARNING LIGHTS STILL ON, AND DON'T HAVE
25 ANY POWER. WAS ABLE TO COAX CAR TO GO THREE
26 BLOCKS TO PARKING LOT, AND CALLED DEALER WHO
27 CAME AND GOT THE CAR. AFTER CHECKING, I WAS TOLD
28 THAT WATER HAD LEAKED DOWN THE RIGHT FRONT

1 PASSENGER SIDE OF THE WINDOW, FREEZING, THAWING
2 AND BACKING UP WHICH GOT TO THE WIRING AND
3 BURNT IT OUT. REALLY GLAD THAT I WASN'T ON THE
4 INTERSTATE THAT MORNING. *TR

- 5 • NHTSA Complaint: EQUINOX HAS HAD POWER FAILURE
6 WHILE DRIVING 6+ TIMES...ALL WHEN DRIVING IN WET
7 CONDITIONS (EITHER RAINING OR HAVING JUST RAINED).
8 FIRST TIME WAS TOLD BY DEALERSHIP THAT I DROVE
9 THRU A PUDDLE AND GOT EVERYTHING WET (I DIDN'T);
10 HAD SOMETHING TO DO WITH THE ELECTRICAL SYSTEM
11 REPLACED. HAVE TAKEN CAR BACK TO DEALER WITHIN
12 THE LAST TWO MONTHS BECAUSE IT HAPPENED AGAIN,
13 AND WAS TOLD ALL OF MY WEATHERSTRIPPING NEEDED
14 REPLACING B/C THAT WAS ALLOWING WATER IN. HAD
15 THIS DONE. HAPPENED AGAIN TONIGHT (WET WEATHER
16 TODAY, BUT WAS NOT RAINING WHEN I WAS DRIVING).
17 THE OTHER TIMES THIS HAS OCCURRED, I'VE LET MY
18 EQUINOX SIT WHERE IT DIED FOR A FEW DAYS TO LET IT
19 "DRY OUT" AND THAT HAS WORKED, BUT THIS NOT
20 EXACTLY THE BEST SOLUTION AS I DON'T LIVE IN THE
21 DESERT AND IT DOES RAIN HERE. CHEVY DEALER OF NO
22 HELP; SAID HE AGREES THERE IS A MANUFACTURING
23 DEFECT BUT THERE IS NOTHING HE CAN DO ABOUT IT.
24 ADVISED ME TO CALL CHEVY CS. I HAVE DEALT WITH
25 THEM BEFORE ON ANOTHER EQUINOX ISSUE AND THEY
26 WERE OF NO HELP. WISH I WOULD HAVE INVESTIGATED
27 MY STATE'S LEMON LAW IN TIME. SUDDEN AND TOTAL
28 LOSS OF POWER IS DANGEROUS!! *TR

- 1 • NHTSA Complaint: EVERYTIME THAT I TAKE MY CAR IN
2 FOR A QUICK CAR WASH OR IF IT RAINS REALLY HARD (IN
3 FLORIDA IT DOES)... WATER LEAKS THROUGH THE LIGHTS
4 IN THE CEILING, THE BACK HATCH, AND THROUGH THE
5 FLOOR BOARDS. MY CHECK ENGINE LIGHT COMES ON
6 AND THE DEALER TELLS ME THAT IT IS WATER
7 CORROSION FROM THE WATER LEAKING THROUGH THE
8 ELECTRICAL WIRING HARNESS. THIS CAUSES MY CAR TO
9 RUN, EVEN THOUGH I HAVE MY PEDAL TO THE FLOOR,
10 VERY SLOW. I CAN'T GO PAST 10MPH. I AM AFRAID OF
11 ELECTRICAL FIRE. I CAN HARDLY TURN A CORNER... I AM
12 AFRAID OF A CAR ACCIDENT. MY CAR IS ONLY 2 YEARS
13 OLD NOW... 4/2008 AND THIS HAS HAPPENED A 3RD TIME.
14 MY BATTERY HAS ALREADY HAD TO BE REPLACED AND
15 MY RADIO REPLACED TWICE BECAUSE OF THE "CD
16 CHANGER ERROR". NOW I CAN ONLY IMAGINE, WITH ALL
17 OF THE WATER THAT KEEPS COMING IN, WHAT
18 CONDITION MY CAR WILL BE IN A FEW MONTHS FROM
19 NOW. ELECTRICAL PROBLEMS, BAD SMELL, CORRODING
20 FLOOR BOARDS AND WHO KNOWS WHAT ELSE. *TR
- 21 • NHTSA Complaint: THE CONTACT STATED THAT WHILE
22 DRIVING IN THE RAIN VEHICLE LOST POWER. THIS HAS
23 HAPPENED SEVERAL TIMES WITHIN THE LAST 6 MONTHS.
24 THE CONTACT TOOK THE VEHICLE TO THE DEALERSHIP
25 TO BE SERVICED AND THEY HAVE NOT BEEN ABLE TO
26 DIAGNOSIS THE FAILURE. *AK
- 27 • NHTSA Complaint: THE BACK FLOORBOARD OF MY CAR
28 HAS BEEN NOTICABLY WET FOR A FEW MONTHS. MY CAR

1 IS OUT OF WARRANTY SO I BEGAN RESEARCHING ONLINE
2 TO SEE WHAT MIGHT BE THE PROBLEM. THE SEALS
3 AROUND THE DOORS WERE FINE. I DID FIND 3" OF WATER
4 LAYING IN MY SPARE TIRE COMPARTMENT. THERE IS NO
5 DRAIN HOLE FOR THE WATER TO BE REMOVED. THE
6 WATER IS COMING IN FROM THE TAIL LIGHTS. THE
7 DEALERSHIP I PURCHASED THE EQUINOX FROM SIMPLY
8 LAUGHED AT THE PROBLEM AND SAID IT WOULD COST
9 OVER \$200 TO REPLACE JUST THE TAIL LIGHT. THE SMELL
10 INSIDE OF THE VEHICLE IS HORRIBLE. IT IS OBVIOUSLY
11 RUSTING THE BODY AND CAUSING MOLD AND MILDEW
12 INSIDE THE VEHICLE. *TR

- 13 • NHTSA Complaint: I AM EXPERIENCING AN EXTREMELY
14 STRONG MILDEW SMELL INSIDE MY EQUINOX. IT IS SO
15 STRONG PEOPLE COMMENT OUTSIDE THE CAR. THE
16 SMELL ALSO PENETRATES CLOTHING SO THAT OTHERS
17 NOTICE THE SMELL. PEOPLE WILL NOT RIDE IN MY CAR. I
18 HAVE HAD IT TO THE DEALER TWICE. BOTH TIMES THE
19 ODOR IMPROVES SLIGHTLY (THEY DEPDORIZE THE HVAC)
20 BUT STILL OTHERS COMMENT. I AM CONCERNED ABOUT
21 DRIVING MY 3 YEAR OLD B/C OF THE SMELL. WE HAVE
22 FOUND NO VISIBLE WETNESS OR MOLD. THE RUBBER
23 AROUND TWO WINDOWS WAS LOOSE BUT THE DEALER
24 DID NOT FIND WATER INSIDE THE DOOR. THE SMELL
25 DOES NOT SEEM TO BE COMING FROM THE VENTS BUT
26 MORES SO JUST FROM THE CAR. *NM

- 27 • NHTSA Complaint: . . . WATER SOAKING FLOOR BOARDS
28 TWICE CAUSING MOLD & MILDEW *NM

- 1 • NHTSA Complaint: . . . THE CONSUMER HAD DRIVEN
2 THROUGH A CAR WASH, THE DOME LIGHT HAD FILLED
3 WITH WATER, THE LOWER DASH WAS DRIPPING WATER . .
4 . . *SC *JB
- 5 • NHTSA Complaint: SPARE TIRE WELL UNDER THE FLOOR IN
6 THE REAR OF MY EQUINOX FILLS WITH WATER. THIS
7 MORNING IT HAD MORE THAN TWO INCHES. I DID NOT
8 REALIZE THIS WAS HAPPENING AND I DO NOT KNOW
9 WHERE IT IS COMING FROM. MY NEIGHBOR HAS THE
10 SAME PROBLEM AS DOES HIS COWORKER (BOTH ARE
11 FLEET VEHICLES). HE JUST TOLD ME ABOUT IT AND I
12 LOOKED IN MINE. HE HAS GOTTEN A NEW COMPANY CAR
13 AS HE WAS GETTING SICK FROM MOLD FROM THE LEAK.
- 14 • NHTSA Complaint: I HAD TO HAVE MY TRUNK
15 COMPARTMENT REPLACED AND SOME AREAS AROUND
16 THE FRAME OF THE BODY RE-SEALED DUE TO EXCESS
17 WATER ACCUMULATING IN THE SPARE TIME AREA. I WAS
18 FIRST TOLD BY THE DEALER REPAIR SHOP THAT IT WAS A
19 DEFECT BUT WHEN I REQUESTED REIMBURSEMENT GM
20 DENIED THAT THE DEALER EVER TOLD THEM THIS. I
21 BELIEVE GM IS DENYING THAT THERE ARE SOME
22 STRUCTURAL PROBLEMS WITH THIS YEAR AND MODEL
23 AND MY FEAR IS THAT ANOTHER YEAR DOWN THE ROAD
24 THERE WILL BE OTHER ISSUES WITH THE FRAME/BODY
25 OF THIS MODEL VEHICLE. ALSO, IT BOTHERS ME THAT
26 WE ARE ENCOURAGED TO "BUY AMERICAN" BUT THE
27 AMERICAN CAR MAKERS DO NOT WANT TO STAND UP TO
28 THEIR PROMISE OF GOOD MAKEMANSHIP. I AM

1 DISAPPOINTED AND ESPECIALLY WITH THE DISHONESTY
2 AT THE CORPORATE LEVEL OF THIS CORPORATION. *TR
3 • NHTSA Complaint: WE OWN A 2007 EQUINOX, OUR FRIEND
4 STATED THAT HIS EQUINOX HAD WATER IN THE SPARE
5 TIRE COMPARTMENT. WE HAVE BEEN GETTING SICK FOR
6 A WHILE AND DIDN'T KNOW WHY. WE LOOKED IN OUR
7 SPARE TIRE COMPARTMENT AND THERE WAS A FOOT OF
8 WATER. NOW WE CANNOT DRIVE THIS VEHICLE FOR
9 HEALTH REASONS. GM KNEW ABOUT THIS PROBLEM FOR
10 THERE ARE 3 SERVICE BULLETINS FOR THIS PROBLEM.
11 THEY WILL NOT HELP US WITH A TRADE ASSIST AND WE
12 CANNOT DRIVE IT DUE TO THE MOLD. WE HAVE
13 CONDENSATION IN THE INSIDE OF THE VEHICLE AND
14 HAVE TO WIPE IT OFF WITH A TOWEL BEFORE WE CAN
15 DRIVE IT. THE VEHICLE IS FULL OF MOLD! I'M SURE THIS
16 VEHICLE HAS BEEN LEAKING SINCE DAY ONE! *TR

- 17 • Internet Posting: • 2007 Pontiac Torrent, water in the spare tire well,
18 been to dealer 4 times, still leaks, 1st & 2nd time replaced a tail light,
19 3rd time sealed seam in rear panel, 4th time sealed wire grommets at
20 the top of rear door & removed both taillights to seal some body
21 seams. Will not leak with a water hose, only when it rains.
22 • Internet Posting: my 07 equinox is also getting water in the tire well
23 but they dont know where the leak is coming from
24 • Internet Posting: My 2006 Equinox leaks from the driver side near
25 the Hood release I have to keep towels down when it rains. any
26 suggestions??????? In washington state where it rains all the time is
27 not good-.

- 1 • Internet Posting: good luck, I have a 07 Equinox and after taking it to
2 the dealership and them sending it out for repair and fixing 9-10
3 leaks..... I still have water under the spare tire... Also major concern
4 for mold buildup in my carpet. . . . I'm soooooooooo tired of having
5 to deal with this. . . . that was one of the 9 or 10 leaks they have fixed
6 so far. thanks for sharing here's an update ... I now have a
7 lemon law atty. we are waiting for better business bureau to inspect
8 my vehicle. I have purchased a mold kit and will put it in the car
9 tomarrow. I have been back and forth to the doctor soooo many
10 times lately. They now think I have asthma due to being around
11 mold ... hmm wonder where I could have been around mold my
12 doctor advised me not to drive my car anymore .. GM does not want
13 to do anything about this, I am so sick of this, Now my car is parked
14 under a car cover. Gatta love paying for a car note and insurance on
15 something I cannot drive, I have made it my goal to make sure every
16 equinox I see driving around knows to check for this issue .. ,
17 hopefully I can catch them before their warranty wears out.
- 18 • Internet Posting: I CANT STOP CRYING!! i have about ten gallons
19 of standing water in my tire well and the dealer ship just sent me to a
20 "water work place" it will cost me 1,000 dollars ..insurance will not
21 cover it will take 4days to fix it. It will cost 180.00 to rent a car. I
22 have no radio the water damage blew my amp located under back
23 seats so i have to that fixed!! no one can just empty out the water till
24 i come up with this lump sum of money
- 25 • Internet Posting: the dealership that we bought the car from is saying
26 that our warranty doesnt cover the leak. I told the service dude to
27 look online to see how many other equinoxes have this SAME
28 problem, but he didnt care, He said that since there isnt a Government

1 recall, they cant do anything. He thought that \$1000,00 was a good
2 price to pay to seal the rubber part up. Are you freaking kidding me
3 .. , um no thanks, So if any of you got your warranty to cover this ... I
4 just want to know how.

5 42. Customers have reported the water leak defect in the Class Vehicles
6 to Defendant directly and through its dealers. Defendant is fully aware of the
7 water leak defect in the Class Vehicles. Despite this, Defendant has actively
8 concealed the existence and nature of the defect from Plaintiff and the Class
9 Members at the time of purchase or repair and thereafter. Specifically, Defendant
10 has:

- 11 a. failed to disclose, at and after the time of purchase or repair
12 and thereafter, any and all known material defects or material
13 nonconformity of the Class Vehicles, including the water leak
14 defect of the Class Vehicles and its associated repair costs;
- 15 b. failed to disclose at the time of purchase or repair that the Class
16 Vehicles, including the water leak defect of the Class Vehicles,
17 were not in good working order, were defective, and were not
18 fit for their intended purpose; and
- 19 c. failed to disclose or actively concealed the fact that the Class
20 Vehicles had a water leak defect, despite the fact that
21 Defendant learned of such defects through consumer
22 complaints, as well as other internal sources, as early as July
23 2009, if not before.

24 43. Defendant has caused Plaintiff and Class Members to expend money
25 at its dealerships or other third-party facilities to clean, repair, or replace parts
26 and/or take other remedial measures related to the water leak defect of the Class
27 Vehicles, as well as to repair or replace items damaged by water leaks and
28

1 flooding resulting from the water leak defect, despite Defendant's knowledge of
2 the water leak defect.

3 44. Further, Defendant has caused Plaintiff and Class Members to expend
4 money professionally cleaning the Class Vehicles, as well as to find alternative
5 means of transportation due to loss of use of the Class Vehicles.

6 45. Defendant has not recalled the Class Vehicles to repair the defect, has
7 not offered to its customers a suitable repair or replacement of parts free of charge
8 related to the water leak defect, has not offered to reimburse Class Vehicle owners
9 and leaseholders who incurred costs relating to repairs related to the water leak
10 defect, and has not offered to reimburse Class Members any other costs associated
11 with repairing or addressing problems caused by the water leak defect.

12 46. The Class Members have not received the value for which they
13 bargained when they purchased or leased the Class Vehicles.

14 47. As a result of the defect, the value of the Class Vehicles has
15 diminished, including without limitation their resale values.

16 **VIOLATION OF CALIFORNIA SECRET WARRANTY LAW**

17 48. Defendant has violated, and continues to violate, California Civil
18 Code section 1795.90 *et seq.* (the "California Secret Warranty Law"). The
19 California Secret Warranty Law was enacted to abolish "secret" warranties. The
20 term "secret warranty" is used to describe the practice by which an automaker
21 establishes a policy to pay for repair of a defect without making the defect or the
22 policy known to the public at large. A secret warranty is usually created when the
23 automaker realizes that a large number of its customers are experiencing a defect
24 not covered by a factory warranty, and decides to offer warranty coverage to
25 individual customers only if, for example, the customer complains about the
26 problem first. The warranty is considered "secret" because all owners are not
27 notified of it. Instead, the automaker may issue a TSB to its regional offices
28 and/or dealers on how to deal with the defect, although a TSB or other formal

1 document is not necessary to create a secret warranty. Because owners are kept in
2 the dark about the cost-free repair, the automaker only has to reimburse those
3 consumers who complain loudly enough; the quiet consumer either does not fix
4 the problem or pays to fix the defect by himself or herself.

5 49. Section 1795.2 of the California Secret Warranty Law imposes
6 several duties on auto manufacturers like Defendant, each of which is designed to
7 do away with secret warranties.

8 50. Plaintiff and members of the proposed Class are consumers as that
9 term is defined by section 1795.90(a) of the California Secret Warranty Law. The
10 California Secret Warranty law requires automakers to notify consumers, by first-
11 class mail, within 90 days of adoption, whenever they adopt "any program or
12 policy that expands or extends the consumer's warranty beyond its stated limit or
13 under which [the] manufacturer offers to pay for all or any part of the cost of
14 repairing, or to reimburse consumers for all or any part of the cost of repairing,
15 any condition that may substantially effect vehicle durability, reliability, or
16 performance"⁴

17 51. The California Secret Warranty Law also requires automakers to
18 provide the New Motor Vehicle Board with a copy of the notice described above,
19 so the public can view, inspect, or copy that notice.

20 52. Additionally, the California Secret Warranty Law requires
21 automakers to advise their dealers, in writing, of the terms and conditions of any
22 warranty extension, adjustment, or reimbursement program.

23 53. The California Secret Warranty Law also requires an automaker to
24 "implement procedures to assure reimbursement of each consumer eligible under
25

26
27 ⁴ Plaintiff alleges that Defendant formally adopted the secret TSB, as well
28 as the repair or replacement program for the water damaged components in or
around July 2009.

1 an adjustment program who incurs expenses for repair of a condition subject to the
2 program prior to acquiring knowledge of the program.”

3 54. In or around July 2009, Defendant formally adopted TSB No. 08-08-
4 57-001A. The TSB describes the numerous water leak defects suffered by the
5 Class Vehicles:

- 6 a. Water may be entering from top of the strut tower into the
7 driver side and or passenger side floor.
- 8 b. Water may be entering through the seams in the floor pan on
9 the driver side and/or passenger side.
- 10 c. Water may be entering through the liftgate weatherstrip.
- 11 d. Water may be entering between the liftgate and the
12 weatherstrip.
- 13 e. Water may be entering through a gap in the sealer at the rear
14 D-pillar (roof to body).
- 15 f. Water in spare tire.
- 16 g. Water in the rear compartment.

17 The TSB also describes the numerous possible causes of those water leak defects:

- 18 a. Water may be entering from top of the strut tower into the
19 driver side and or passenger side floor.
- 20 b. Water may be entering through the seams in the floor pan on
21 the driver side and/or passenger side.
- 22 c. Water may be entering through the liftgate weatherstrip.
- 23 d. Water may be entering between the liftgate and the
24 weatherstrip.
- 25 e. Water may be entering through a gap in the sealer at the rear
26 D-pillar (roof to body).
- 27 f. Water may be entering through a gap in the sealer behind the
28 rear fascia.

- 1 g. Water may be entering through a gap in the sheet metal behind
2 the tail lamps.

3 Finally, the TSB describes the various temporary fixes for the water leak defects:

- 4 a. Reseal the strut tower. Use 3M(TM) Ultrapro Autobody
5 Sealant Clear or equivalent.
6 b. Remove the carpet and reseal the sheet metal seam.
7 c. Remove the weatherstrip and reseal the sheet metal.
8 d. Adjust the liftgate. Refer to Liftgate Adjustment in SI.
9 e. Remove the roof rack and inspect for any voids in the sealant.
10 Refer to Luggage Carrier Replacement Equinox or Torrent in
11 SI. Use 3M™ Ultrapro Autobody Sealant Clear or equivalent.
12 f. Remove the rear fascia and reseal the sheet metal seam. Refer
13 to Rear Bumper Fascia Replacement in SI.
14 g. Remove the tail lamps. Refer to Tail Lamp Replacement in SI
15 and reseal the sheet metal seam.

16 55. The TSB further states: "Important: IF A MILDEW ODOR IS
17 PRESENT IN THE VEHICLE, REFER TO PIT4535." (emphasis in original).

18 56. Plaintiff is informed and believes and based thereon alleges that the
19 free water leak defect repairs outlined in Defendant's secret TSB is applicable to
20 all Class Vehicles.

21 57. Defendant does not typically pay for repairing the water leak defect
22 under its new car warranty (or any other warranty) because Defendant considers
23 water leaks to be the result of outside influences and, therefore, not covered by
24 Defendant's express warranty. In fact, Defendant or Defendant's authorized
25 dealers for vehicle repairs typically tell consumers that the water leak defect is as a
26 result of an outside influence and not covered under warranty.⁵ Thus, by

27
28 ⁵ For example, a GM consumer explained GM's refusal to provide
warranty coverage this way:

1 extending its warranties to cover repair of the water leak defect, Defendant has
2 "expand[ed] or extend[ed] the consumer's warranty beyond its stated limit."

3 58. Additionally, the vehicle performance problems that the TSB
4 resealing and/or replacement procedures are intended to address "substantially
5 affect the vehicle durability, reliability, or performance." These problems include,
6 but are not limited to, engine failure, electrical system failure, as well as water
7 damage to interior components of the vehicles and tail lights, and rust. Therefore,
8 the offers to provide free repair of the water leak defect are "adjustment
9 programs" within the meaning of the California Secret Warranty Law.

10 59. Plaintiff is informed and believes and based thereon alleges that
11 Defendant has also extended its warranty in another way; namely, by employing a
12 secret policy to pay for the water leak defect related damage of those consumers
13 who complain loudly enough. The decision to offer this free repair outside the
14 vehicle's New Car Warranty is not done on an *ad hoc* basis. Rather, it is made
15 pursuant to a systematic policy—communicated to *inter alia*, regional offices,
16 dealers, and GM customer care personnel—to pacify the most vocal consumers so
17 as to preserve Defendant's reputation. Upon information and belief, the code
18 names for these policies, include but are not limited to good will adjustments or
19 policy adjustments.⁶

20 60. Again, water leaks are not normally included in the warranty
21 coverage. Thus, by extending its warranties to cover the water leak defect and/or

22 The dealership that we bought the car from is saying that our
23 warranty doesnt cover the leak. I told the service dude to look
24 online to see how many other equinoxes have this SAME problem,
25 but he didnt care, He said that since there isnt a Government recall,
26 they cant do anything. He thought that \$1000,00 was a good price
27 to pay to seal the rubber part up. Are you freaking kidding me .. ,
28 um no thanks, So if any of you got your warranty to cover this ... I
just want to know how.

⁶ For example, Defendant refused to replace Plaintiff's indoor carpets,
while at the same time it has reimbursed or replaced such items for other
consumers who complain loudly enough for the same and/or similar items.

1 related damage, Defendant has "expand[ed] or extend[ed] the consumer's
2 warranty beyond its stated limit." Thus, Defendant's temporary repair and/or
3 repair of damage constitutes an adjustment program under the Secret Warranty
4 Law and constitutes an offer to pay for or to reimburse consumers for the cost of
5 repairing a condition that substantially affects vehicle durability, reliability, or
6 performance.

7 61. As a result of the foregoing, Defendant is obligated to comply with
8 the provisions of the California Secret Warranty Law with respect to its resealing,
9 replacing, repairing, and reimbursement offers. It has not done so.

10 62. Specifically, Defendant did not notify Plaintiff, or any other owner or
11 lessee of a Class Vehicle, of their right to free repair of the water leak defect and
12 consequent damage, or to be reimbursed for the cost of repairing the water leak
13 defect and consequent damage (*e.g.*, replacement of interior carpets, as well as
14 other components within the vehicle damaged by the water leak defect).

15 63. Defendant has also refused to provide the free water leak repair,
16 replacement or reimbursement to owners or lessees of affected vehicles who have
17 specifically requested it. Moreover, even though Defendant is aware of fixes for
18 this problem, Defendant has refused to notify Plaintiff, or any other owner or
19 lessee of a Class Vehicle, of these available fixes and has refused to pay or
20 reimburse owners or lessees of Class Vehicles for the consequent damages that the
21 water leak defect causes.

22 64. Additionally, Defendant has refused to reimburse consumers who
23 have paid to repair the water leak defect and/or paid for damage resulting from the
24 water leak defect.

25 65. Upon information and belief, Defendant did not comply with the
26 dealer-notification provisions of the California Secret Warranty Law.

27 66. Upon information and belief, Defendant has also failed to comply
28 with the New Motor Vehicle Board notification procedures.

TOLLING OF THE STATUTE OF LIMITATIONS

67. Since the defects in the design or manufacture of the Class Vehicles resulting in water leaks cannot be detected until the defect manifests, Plaintiff and Class Members were not reasonably able to discover the problem until long after purchasing or leasing the Class Vehicles, despite their exercise of due diligence.

68. Plaintiff and Class Members had no realistic ability to discern the water leak defect until water leaks occurred. In addition, despite their due diligence, Plaintiff and Class Members could not reasonably have been expected to learn or discover that they were deceived and that material information concerning the water leak defect was concealed from them, until manifestation of the defect. Therefore, the discovery rule is applicable to the claims asserted by Plaintiff and the Class Members.

69. Upon information and belief, Defendant has known of the structural defects contained in the Class Vehicles since at least July 2009, if not earlier, and has concealed from or failed to alert owners and lessees of the Class Vehicles of the water leak defect at the time of purchase or repair.

70. Any applicable statutes of limitation have therefore been tolled by Defendant's concealment and denial of the facts alleged here. Defendant is further estopped from relying on any statutes of limitation because of its concealment of the defective nature of the Class Vehicles.

CLASS ACTION ALLEGATIONS

71. Plaintiff brings this lawsuit as a class action on behalf of himself and all other California residents similarly situated as members of a proposed Plaintiff Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

72. The Class and Sub-Class is defined as:

1 Class: All persons in the State of California who currently own or lease, or
2 owned or leased, a Chevrolet Equinox for the model years 2005-2009 or a
3 Pontiac Torrent of any type for the model years 2006-2009.

4 Sub-Class: All Members of the Class who are "consumers" within the
5 meaning of California Civil Code section 1761(d) ("the CLRA Sub-Class").

6 Excluded from the Class and sub-Class are: (1) all claims for out-of-
7 pocket water leak defect related expenses that were incurred prior to July 2009;
8 (2) any claims for personal injury; (3) Defendant, any entity in which Defendant
9 has a controlling interest or which has a controlling interest of Defendant, and
10 Defendant's legal representatives, assigns, and successors; and (4) the judge to
11 whom this case is assigned, as well as any member of the judge's immediate
12 family.

13 73. Plaintiff reserves the right to amend the Class and Sub-Class
14 definitions if discovery and further investigation reveal that the Class and Sub-
15 Class should be expanded or otherwise limited.

16 74. Numerosity: Although the exact number of Class Members is
17 uncertain and can only be ascertained through appropriate discovery, the number
18 is great enough such that joinder is impracticable. The disposition of the claims of
19 these Class Members in a single class action will provide substantial benefits to all
20 parties and to the Court.

21 75. Typicality: The claims of the representative Plaintiff is typical of the
22 claims of the Class in that the representative Plaintiff, like all Class Members,
23 owns a Class Vehicle designed and manufactured by Defendant that has the water
24 leak defect. The representative Plaintiff, like all Class Members, has been
25 damaged by Defendant's misconduct in that he has incurred or will incur the cost
26 of repairing the water leak defect or repairing damage caused by the defective
27 water leak defect. Furthermore, the factual bases of Defendant's misconduct are
28 common to all Class Members and represent a common thread of fraudulent,

1 deliberate, and negligent misconduct resulting in injury to all Members of the
2 Class.

3 76. Commonality: There are numerous questions of law and fact common
4 to Plaintiff and the Class which predominate over any questions affecting only
5 individual Class Members. These common legal and factual issues include the
6 following.

- 7 a. Whether the Class Vehicles are defectively designed or
8 manufactured such that they are not suitable for their intended
9 use;
- 10 b. Whether Defendant knew or should have known of the
11 inherent design or manufacturing defect in its Class Vehicles;
- 12 c. Whether Defendant fraudulently concealed from or failed to
13 disclose to Plaintiff and the Class the inherent problems with
14 its Class Vehicles;
- 15 d. Whether Defendant had a duty to Plaintiff and the Class to
16 disclose the inherent problems with its Class Vehicles;
- 17 e. Whether the facts concealed or not disclosed by Defendant to
18 Plaintiff and the Class are material;
- 19 f. Whether as a result of Defendant's concealment of or failure to
20 disclose material facts, Plaintiff and the Class acted to their
21 detriment by purchasing or repairing the Class Vehicles;
- 22 g. Whether Defendant engaged in unfair competition or unfair
23 deceptive acts or practices when it concealed the limitations
24 and failed to warn Plaintiff and Class Members of the defects
25 in its Class Vehicles;
- 26 h. Whether resealing the water leak defect under Defendant's
27 clandestine TSB program is an "adjustment program" under
28 the Secret Warranty Law;

- 1 i. Whether Defendant should be declared financially responsible
2 for notifying all Class Members of the problems with its Class
3 Vehicles and for the costs and expenses of repair and
4 replacement of the Class Vehicles;
5 j. Whether Plaintiff and the Class are entitled to replacement of
6 parts related to the water leak defect;

7 77. Adequate Representation: Plaintiff will fairly and adequately protect
8 the interests of the Class. Plaintiff has retained counsel with substantial
9 experience in prosecuting consumer class actions—specifically actions involving
10 defective products. Plaintiff and his counsel are committed to prosecuting this
11 action vigorously on behalf of the Class and have the financial resources to do so.
12 Neither Plaintiff nor his counsel has any interest adverse to those of the Class.

13 78. Predominance and Superiority: Plaintiff and the Members of the
14 Class have all suffered and will continue to suffer harm and damages as a result of
15 Defendant's unlawful and wrongful conduct. A class action is superior to other
16 available methods for the fair and efficient adjudication of the controversy.
17 Absent a class action, most Class Members would likely find the cost of litigating
18 their claims prohibitively high and would therefore have no effective remedy at
19 law. Because of the relatively small size of the individual Class Member's claims,
20 it is likely that only a few Class Members could afford to seek legal redress for
21 Defendant's misconduct. Absent a class action, Class Members will continue to
22 incur damages and Defendant's misconduct will continue without remedy. Class
23 treatment of common questions of law and fact would also be superior to multiple
24 individual actions or piecemeal litigation in that class treatment will conserve the
25 resources of the courts and the litigants, and will promote consistency and
26 efficiency of adjudication.

FIRST CLAIM FOR RELIEF
(Violation of California's Consumers Legal Remedies Act,
California Civil Code section 1750 et seq.)

79. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

80. Plaintiff brings this cause of action against Defendant on behalf of himself and on behalf of the Members of the sub-Class.

81. Defendant is a "person" as defined by Civil Code section 1761(c).

82. Plaintiff and Class Members are consumers who purchased or leased the Class Vehicles.

83. By failing to disclose and concealing the water leak defect, Defendant violated Civil Code section 1770(a), as it represented that its Class Vehicles had characteristics and benefits that they do not have, and represented that its Class Vehicles were of a particular standard, quality or grade when they were of another. (*See* Civ. Code §§ 1770(a)(5) & (7).)

84. Defendant's unfair or deceptive acts or practices occurred repeatedly in Defendant's trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

85. Defendant knew that its Class Vehicles were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use.

86. Defendant was under a duty to Plaintiff and the Class to disclose the defective nature of the Class Vehicles:

- a. Defendant was in a superior position to know the true state of facts about the safety defect and associated repair costs in the Class Vehicles;

- 1 b. Plaintiff and the Class Members could not reasonably have
2 been expected to learn or discover that the Class Vehicles had
3 a dangerous safety defect until manifestation of the failure; and
4 c. Defendant knew that Plaintiff and the Class Members could
5 not reasonably have been expected to learn or discover the
6 safety defect and the associated repair costs that it causes.

7 87. In failing to disclose the water leak defect and the associated repair
8 costs that it causes, Defendant has knowingly and intentionally concealed material
9 facts and breached its duty not to do so.

10 88. The facts concealed or not disclosed by Defendant to Plaintiff and the
11 Class are material in that a reasonable consumer would have considered them to
12 be important in deciding whether to purchase or repair Defendant's Class
13 Vehicles, including repairing, cleaning, and/or replacing carpets, flooring,
14 electronic components, or other parts damaged by the water leak defect. Had
15 Plaintiff and the Class known about the defective nature of the Class Vehicles,
16 they would not have purchased or repaired the Class Vehicles, or they would have
17 paid less to repair or purchase it.

18 89. Plaintiff and the Class reasonably expected the Class Vehicles to
19 function properly and not to experience water leaks inside the interior cabin,
20 including the trunk, for the life of their vehicles. That is the reasonable and
21 objective consumer expectation.

22 90. As a direct and proximate result of Defendant's unfair or deceptive
23 acts or practices, Plaintiff and the Class have suffered and will continue to suffer
24 actual damages.

25 91. Plaintiff and the Class are also entitled to equitable and injunctive
26 relief.

27 92. Plaintiff has provided Defendant with notice of its alleged violations
28 of the CLRA pursuant to Civil Code section 1782(a). Defendant failed to provide

1 the appropriate relief for its violation of the CLRA within 30 days of the date of
2 the notification letter.

3
4 **SECOND CLAIM FOR RELIEF**

5 **(Violation of California's Unfair Business Practices Act, California Business**
6 **& Professions Code section 17200 *et seq.* – Violations of California's Secret**
7 **Warranty Law)**

8 93. Plaintiff hereby incorporates by reference the allegations contained in
9 the preceding paragraphs of this Complaint.

10 94. Plaintiff brings this cause of action on behalf of himself and on behalf
11 of the Members of the Class.

12 95. By committing the acts and practices alleged herein, Defendant
13 violated the Secret Warranty Law, and by doing so, has engaged in deceptive,
14 unfair, and unlawful business practices in violation of the Unfair Competition Law
15 ("UCL"), California Business & Professions Code section 17200 *et seq.*

16 96. Defendant's violation of the Secret Warranty Law (hence the UCL)
17 continues to this day. As a direct and proximate result of Defendant's violations
18 of the Secret Warranty Law, hence the UCL, Plaintiff and Class Members have
19 suffered damages related to the water leak defect.

20 97. Pursuant to section 17203 of the UCL, Plaintiff and Class Members
21 seek an order of this Court requiring Defendant to comply with the terms of the
22 California Secret Warranty Law by: (a) notifying Class Members of the secret
23 program for repairing the water leak defect and reimbursing for damage caused by
24 the water leak defect as required by the California Secret Warranty Law; (b)
25 providing free repairs, modifications, corrections, and/or replacements to all Class
26 Members as required by the Secret Warranty Law; (c) identifying and reimbursing
27 all Class Members who have made payments related to the water leak defect as
28 required by the Secret Warranty Law; (d) notifying California dealers of the facts

1 underlying the water leak defect and the terms of the secret program for repairing
2 the water leak defect and reimbursing for damage caused by the water leak defect
3 as required by the Secret Warranty Law; and (e) notifying the California New
4 Motor Vehicle Board of the secret program for repairing the water leak defect and
5 reimbursing for damage caused by the water leak defect as required by the Secret
6 Warranty Law.

7 98. Plaintiff and Class Members also seek an order: (a) enjoining
8 Defendant from failing and refusing to make full restitution of all moneys
9 wrongfully obtained as a result of its violations of the California Secret Warranty
10 Law, and (b) disgorging to Plaintiff and Class Members all ill-gotten revenues
11 and/or profits earned as a result of Defendant's violation of the California Secret
12 Warranty Law, plus an award of attorneys' fees and costs. This is because
13 Defendant profited from its sale of replacement parts to mechanics and dealers
14 because they ultimately replaced, repaired, corrected, or modified the defective
15 and/or replacement parts related to the water leak defect and damage caused by
16 the water leak defect.

17 **THIRD CLAIM FOR RELIEF**

18 **(Violation of UCL other than Violation of the Secret Warranty Law,**
19 **California's Unfair Business Practices Act, California Business & Professions**
20 **Code section 17200 *et seq.*)**

21 99. Plaintiff hereby incorporates by reference the allegations contained in
22 the preceding paragraphs of this Complaint.

23 100. Plaintiff brings this cause of action against Defendant on behalf of
24 himself and on behalf of the Members of the Class.

25 101. California Business & Professions Code section 17200 prohibits acts
26 of "unfair competition," including any "unlawful, unfair or fraudulent business act
27 or practice" and "unfair, deceptive, untrue or misleading advertising."
28

1 102. Defendant knew its Class Vehicles were defectively designed or
2 manufactured, would fail prematurely, and were not suitable for their intended
3 use.

4 103. Defendant concealed and failed to disclose to Plaintiff and the Class
5 the defective nature of the Class Vehicles:

- 6 a. Defendant was in a superior position to know the true state of
7 facts about the safety defects contained in the Class Vehicles;
8 b. Defendant made partial disclosures about the quality of the
9 Class Vehicles without revealing that they were defective and
10 highly prone to water leakage and flooding; and
11 c. Defendant actively concealed the defective nature of the Class
12 Vehicles from Plaintiff and the Class.

13 104. In failing to disclose the water leak defect, Defendant has knowingly
14 and intentionally concealed material facts and breached its duty not to do so.

15 105. The facts concealed or not disclosed by Defendant to Plaintiff and the
16 Class are material in that a reasonable person would have considered them to be
17 important in deciding whether to purchase or repair the Class Vehicles, or pay a
18 lesser price for them. Had Plaintiff and the Class known about the defective
19 nature of the Class Vehicles, they would not have purchased and/or repaired the
20 Class Vehicles or would have paid less for them.

21 106. Defendant continues to conceal the defective nature of the Class
22 Vehicles even after Class Members began to report problems. Indeed, Defendant
23 continues to cover up and conceal the true nature of the problem until this date.

24 107. By its conduct alleged herein, Defendant has engaged in unfair
25 competition and unlawful, unfair, and fraudulent business acts and practices.

26 108. Defendant's unfair or deceptive acts or practices occurred repeatedly
27 in Defendant's trade or business, and were capable of deceiving a substantial
28 portion of the purchasing public.

1 109. As a direct and proximate result of Defendant's unfair and deceptive
2 practices, Plaintiff and the Class have suffered and will continue to suffer actual
3 damages.

4 110. Defendant has been unjustly enriched and should be required to make
5 restitution to Plaintiff and the Class pursuant to sections 17203 and 17204 of the
6 California Business & Professions Code.

7 **RELIEF REQUESTED**

8 111. Plaintiff, on behalf of himself and all others similarly situated,
9 requests the Court enter judgment against Defendant, as follows

- 10 a. An order certifying the proposed Plaintiff Class and sub-Class,
11 designating Plaintiff as the named representative of the Class
12 and designating the undersigned as Class Counsel;
- 13 b. A declaration that Defendant is financially responsible for
14 notifying all Class Members of the problems with its Class
15 Vehicles and their water leak defect;
- 16 c. An order requiring Defendant to comply with the Secret
17 Warranty Law by (i) notifying Class Members of the secret
18 repairing of the water leak defect, and the secret repair,
19 replacement, and reimbursement for water leak defect related
20 damage, as required by the California Secret Warranty Law;
21 (ii) providing free replacement, modification, and correction
22 related to the water leak defect to all Class Members as
23 required by the Secret Warranty Law; (iii) identifying and
24 reimbursing all Class Members who have paid for repairing the
25 water leak defect, replacement of parts related to the water leak
26 defect, and repair or replacement for damage caused as a result
27 of the water leak defect, as required by the Secret Warranty
28 Law; (iv) notifying California dealers of the facts underlying

1 the water leak defect problems and the terms of GM's secret
2 water leak defect repair and reimbursement program for the
3 water leak defect related damage, as required by the Secret
4 Warranty Law; and (iv) notifying the California New Motor
5 Vehicle Board of GM's secret water leak defect repair
6 program, and the secret repair, replacement, and
7 reimbursement for water leak defect related damage, as
8 required by the Secret Warranty Law;

- 9 d. An order enjoining Defendant from further deceptive
10 distribution, sales, and lease practices with respect to its Class
11 Vehicles, and to repair the water leak defect and any damage
12 caused by the water leak defect;
- 13 e. An award to Plaintiff and the Class of compensatory,
14 statutory, and punitive damages, including interest, in an
15 amount to be proven at trial.
- 16 f. A declaration that Defendant must disgorge, for the benefit of
17 the Class, all or part of the ill-gotten profits it received from
18 the sale or repair of its Class Vehicles, or to make full
19 restitution to Plaintiff and the Class Members;
- 20 g. An award of attorneys' fees and costs pursuant to California
21 Code of Civil Procedure section 1021.5, the common fund
22 theory, or any other applicable statute, theory, or contract;
- 23 h. An award of pre-judgment and post-judgment interest, as
24 provided by law;
- 25 i. Leave to amend the Complaint to conform to the evidence
26 produced at trial; and
- 27 j. Such other or further relief as may be appropriate under the
28 circumstances.

DEMAND FOR JURY TRIAL

112. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: July 15, 2010

THE LAW OFFICE OF ROBERT L. STARR

By: 

Robert L. Starr
Attorneys for Plaintiff

**PROOF OF SERVICE
CV10-2683 AHM (VBKx)**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the with action; my business address is 23277 Ventura Boulevard, Woodland Hills, California 91364

On July 15, 2010, I served the foregoing document described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, addressed as follows:

Document(s) Served: PLAINTIFF'S FIRST AMENDED COMPLAINT

Person(s) Served: Gregory R. Oxford, Esq.
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XX (BY MAIL) I deposited such envelope in the mail at Woodland Hills, California. The envelope was mailed with postage thereon fully prepaid.

 (BY PERSONAL SERVICE) I personally delivered by hand to the offices of the addressee(s).

XX (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction the service was made.

EXECUTED at Woodland Hills, California on July 15, 2010.


Declarant Gordon Wong